

# The Gazette of India

## EXTRAORDINARY PART II—Section 3 PUBLISHED BY AUTHORITY

No. 259] **NEW DELHI, TUESDAY, AUGUST 30, 1955**

### ELECTION COMMISSION, INDIA.

#### NOTIFICATION

*New Delhi, the 20th August 1955*

**S.R.O. 1864.**—Whereas the election of Shri Balwant Singh as a member of the Legislative Assembly of the State of PEPSU, from the Sirhind constituency has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Tara Singh son of Shri Chuhar Singh, Village Sanipur, P.O. Sirhind Mandi (PEPSU);

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

#### BEFORE THE ELECTION TRIBUNAL, PATIALA

Nawal Kishore—*Chairman.*

Dalip Singh—*Member.*

Krishna Sahai—*Member.*

#### ELECTION PETITION No. 23 OF 1954

S. Tara Singh son of S. Chuhar Singh, Village Sanipur, P.O. Sirhind Mandi (PEPSU)—*Petitioner.*

#### *Versus*

1. S. Balwant Singh, M.L.A. Village and Post Office Chanarthal, District Patiala.
2. S. Janak Singh Village Sanipur, P.O. Sirhind (PEPSU).
3. S. Jaswant Singh Village Bhatmajra, P.O. Sirhind (PEPSU).
4. S. Joginder Singh, M.P., Village Talanian, P.O. Fatehgarh Sahib.
5. S. Ranjit Singh Village Bara, P.O. Sirhind (PEPSU).
6. S. Pritam Singh of Village Khatre c/o The Patiala Bus Service Ltd. Sirhind (PEPSU).
7. S. Gurbakhsh Singh son of S. Gajjan Singh Grewal, Ex-M.L.A., Civil Lines, Patiala.
8. S. Darbara Singh, Village Sondha, P.O. Jalha, Tehsil Sirhind (PEPSU).
9. Shri Sadhu Ram, Doctor, Sirhind Mandi (PEPSU).
10. S. Mihain Singh son of S. Jagat Singh, House No. 7, Hamayunpur, P.O. Sirhind Mandi (PEPSU).—*Respondents.*

## ORDER DELIVERED ON 9TH OF AUGUST, 1955

This petition No. 23 has been filed by Tara Singh, an elector in the Sirhind Constituency, challenging the election of Respondent No. 1 Jathedar Balwant Singh. There were ten candidates from the Sirhind Constituency and out of these respondents 6 to 9 withdrew. The nomination paper of Respondent No. 10 was rejected on the ground that he had not filed Form 5-A with it. Only five candidates were left in the field, though the contest was between Respondent No. 1 Balwant Singh and Ranjit Singh Respondent No. 5, as is clear from the following detail showing the total number of votes polled by each candidate:—

|  |        |
|--|--------|
| (1) Respondent No. 1 Balwant Singh, (Congress) | 10,621 |
| (2) Respondent No. 2 Janak Singh               | 504    |
| (3) Respondent No. 3 Jaswant Singh             | 287    |
| (4) Respondent No. 4 Joginder Singh            | 151    |
| (5) Respondent No. 5 Ranjit Singh (Akali)      | 9,561  |

The result was that Respondent No. 1 was declared elected. None of the defeated candidates has chosen to challenge the election of Respondent No. 1, but Tara Singh who is an elector in the constituency has filed the present petition on the following grounds:—

- (1) That rejection of the nomination paper of Mihain Singh Respondent No. 10 on the ground that he had not filed with the nomination paper Form 5-A containing the acceptance of his election agent, Harbachan Singh, was improper and had materially affected the result of election.
- (2) That the change of the election symbol of 'Railway Engine' originally allotted to Respondent No. 2 Janak Singh for the symbol of 'Ladder', 20 days after it had been allotted, had materially affected the result of the election.
- (3) That Respondent No. 1 had committed the following corrupt practices on account of which the election was wholly void:—
  - (a) He and his agents had obtained etc. [words taken *verbatim* from Section 123 (8)] assistance for furthering the prospects of his election from Government servants. Particulars of this corrupt practice are given in Annexure A but on an objection raised by counsel for Respondent No. 1, further and better particulars of this corrupt practice were furnished, after an order to that effect had been passed by the Tribunal on 15th December, 1954.

It is not necessary to incorporate these details here and it will be sufficient to mention that it is alleged that Harisharn and Ripudaman Singh Nayapanches and Nand Lal, Nayae Pardhan stated to be Government servants had assisted Respondent No. 1 in securing votes in various villages mentioned in the further and better particulars. Assistance of this kind is also alleged to have been taken from Lambardar Jot Ram of Nandpur Kesho, Inder Singh, Headmaster of Government School at Nandpur Kesho, Chattr Singh, Lambardar and Sufedposh of Mulepur, Shamsher Singh, Zaildar of Chanarthal, Partap Singh, Lamberdar, Bakhtawar Singh, Lamberdar of Polla and Harchand Singh, Patwari.

The detail of the assistance rendered by them is set out in the further and better particulars which will be referred to as and when necessary.

- (b) Respondent No. 1 and his agents promised grants of lands to voters belonging to Scheduled Castes in order to induce them to vote for Respondent 1 and refrain from voting for Respondents 2 to 5. Particulars relating to these promises are mentioned in Annexure B with reference to Sham Singh of Nolakha and Ram Partap Vaid of Sirhind Mandi, and other persons were also alleged to have made such promises but their names are not mentioned in Annexure B, and are stated to be the same as in Annexure A.

This was objected to as vague and indefinite and accordingly further and better particulars were furnished as directed. It may be pointed out, in passing, that these particulars do not assign any act to Sham Singh of Nolakha particularly mentioned in Annexure B. Further while Annexure B was silent, the term 'bribery' has for the first time been introduced in the further and better particulars obviously for the purpose of giving the alleged promises a legal 'habitation' and a name as it were, the implication being that these promises were in the nature of a gratification offered to the electors to induce them to vote for Respondent No. 1

and refrain from voting for the other candidates. This aspect and the evidence produced on the point will be dealt with at the proper place.

- (c) Respondent No. 1 and his agent had incurred and authorised expenditure on account of and in the conduct of management of the election in excess of the maximum amount specified in Schedule V of the Rules and Respondent No. 1 had accordingly made a return of election expenses which was false in several material particulars.

In Annexure C numbers of 8 motor vehicles are mentioned and it was generally alleged that Respondent No. 1 had not shown the value of services rendered by these vehicles to him in the conduct of the election. This being vague, further and better particulars were called and accordingly the petitioner has furnished details of the expenses incurred in connection with these vehicles. He has added a ninth vehicle No. 3499 to the list originally furnished and the detail given by him shows that the sum of Rs. 402-2-0 and 991-10-0 had been spent on petrol consumed by these 9 vehicles between 23rd January, 1954 and 27th February, 1954.

- (d) Respondent No. 1 and his agents had hired motor vehicles and country carts for conveyance of electors to and from polling stations. Particulars of this corrupt practice are given in Annexure D and the only polling stations mentioned are Chela, Reona Niwan and Jalla, while in the further and better particulars which were subsequently called are mentioned names of persons whose country carts were used, and also names of voters who were conveyed in these carts and in Bus No. PU 2978, Tractor No. PU 3499 and PU 4737.

- (e) Lastly it is alleged that corrupt practice of bribery had extensively prevailed in the Election which accordingly had not been a free election. In Annexure E it was stated that the practice of bribery was so rampant between 1st January, 1954 and 18th February 1954 that no comprehensive and exhaustive list could be furnished. It was generally alleged to have been committed by Respondent No. 1 and his agents mentioned in Annexures A to D.

In the further and better particulars all the additional details given in connection with Annexure B are repeated *verbatim*, except in regard to villages Manupur and Balhara which are mentioned in addition.

On the above allegations, the petitioner prayed that the election of Respondent 1 may be declared void or it may be declared that the election was wholly void and further that Respondent 1 and his agents responsible for the commission of corrupt practice may be disqualified under Part VIII of the Act.

The Respondent No. 1, the only contesting Respondent, presented a lengthy written statement covering as many as 17 closely typed pages, and consisting of a number of preliminary objections and also a reply on the merits.

It was pleaded:

- (a) that the election petition had not been presented within time and properly. It was presented on 26th May, 1954, the last day of the limitation by S. Amar Singh Ambalvi, Advocate who had filed a power of attorney in his favour but had no express authority in writing by the petitioner to present the election petition. On an objection raised by the Election Commission, India, a letter of authority in his favour dated 30th June, 1954 was sent to the Election Commission on 5th July 1954. It was accordingly pleaded that the petition should be deemed to have been presented on this date, and was barred by time.
- (b) That the petition and Annexures A to E were not signed by the petitioner himself and further that the verification on these documents were defective and incorrect.
- (c) That the petition was benami and not bonafide, as the petitioner had been put up as a figure head by the Akali Party which was conducting and financing the petition.
- (d) That the Respondent could not plead for want of knowledge and without inspecting the Treasury receipt and the relevant challan who had actually deposited the security of Rs. 1,000. It was stated that the Respondent would file additional written statement after inspecting the relevant documents, if necessary. It may be pointed out that no such additional written statement has been presented.

On the above pleadings four preliminary issues that is issues 1 to 4 were framed.

Pleadings on the merits may be set out as below:—

- (a) Harbachan Singh of Tarkhanmajra had not been appointed as election agent by Respondent No. 10 and therefore his nomination had been properly rejected. The order of the Returning Officer rejecting the nomination paper was proper as it had not been presented as required by Section 33 of Act 40 of 1953 and therefore the rejection had not materially affected the result of the election.
- (b) Respondent No. 1 did not obtain assistance from any person serving under the Government as alleged in para. 12(ii) of the petition and Annexure A and further and better particulars. The persons named in the Annexures and further and better particulars are not Government servants. Balwant Singh son of Sohan Singh of Balhari was not appointed as Polling Agent nor did he act as such at Manupur and Balhara polling stations.
- (c) Respondent No. 1 and his agents did not make promises of grants of land to voters belonging to Scheduled Caste with the object of inducing them to vote for Respondent No. 1 as alleged in Annexures B and E and further and better particulars. In any case this did not amount to corrupt practice and was only in accord with state policy under the Constitution.
- (d) The symbol of ladder was accepted by Respondent No. 2 willingly and in any case the change from 'Railway Engine' to 'ladder' had not materially affected the result of the election.
- (e) Respondent No. 1 or his agents did not incur or authorise expenditure in hiring motor vehicles in excess of the maximum amount specified under the Rules and therefore the return of election expenses was not false. It was denied that motor vehicles or country carts specified in the annexure were employed by the respondent for carrying voters to and from the polling station.

On the above pleadings on the merits issues 5 to 13 were framed. We will now deal with these issues *seriatim*.

#### PRELIMINARY ISSUES

*Issue No. 1.*—Whether the Election Petition was within time. After some argument by the learned counsel for the petitioner, the respondent's learned counsel stated at the bar that this issue will not be pressed by him. He thereby admitted that the petition may be held to have been filed within time. This issue is accordingly decided in the petitioner's favour.

*Issue No. 2.*—"Whether the Election Petition was not properly presented to the Election Commission?"

According to Section 81(2) of Act 43 of 1951, an election petition shall be deemed to have been presented to the Election Commission when it is delivered to the Secretary to Commission by the person making the petition or by a person authorised in writing in this behalf by the person making the petition or when it is sent by registered post and is delivered to the Secretary to the Commission.

An objection was raised by the Election Commission by means of their letter dated 11th June 1954 to the address of the counsel for the petitioner that the petition had been presented by the latter without an express authority to present it. On 1st July, 1954 the petitioner informed the Election Commission that the Vakalatnama already filed with the petition authorised the counsel to present it. He, however, sent another letter expressly authorising the Counsel to do so. We have perused the Vakalatnama which is couched in very wide language and confers upon the counsel to file all pleadings and petitions. In the circumstances further authority to file the election petition was not required. When the petition was presented to the Election Commission by the counsel, as indeed it was, it may be deemed to have been delivered by a person authorised by the petitioner in this behalf. Besides this, there is the statement of P.W. 2 petitioner that he was in the office of the Election Commission, along with his counsel on the date the petition was presented. P.W. 26 Ranjit Singh, Respondent 5 stated that he had not only seen the petitioner going to Delhi by train from Patiala along with his counsel, on the night before the presentation of the petition at Delhi, but had also purchased their tickets for Delhi and accompanied them upto Rajpura. The petitioner had represented to the Election Commission, in reply to their letter dated 11th June 1954 by means of Ex. P.W. 2/3, dated 1st July 1954 that he was

himself present in the office of the Election Commission, alongwith his counsel, at the time of presentation. The burden of proving this issue lay on the Respondent No. 1 but he has led no evidence to the contrary. We are in the circumstances not surprised that the learned counsel for Respondent No. 1 did not press this issue. The petition must accordingly be held to have been properly presented. Issue No. 2 is decided in the petitioner's favour.

Issue No. 3.—This issue relates to the petitioner's signatures on the petition annexures and other documents. The respondent's learned counsel stated at the bar that he will not press this issue which is accordingly hereby decided in the petitioner's favour.

Issue No. 4.—This issue consists of two parts:—

(a) Whether the petition was benami and not *bonafide*.

(b) Was the security of Rs. 1,000 not deposited with the Election Commission by the petitioner.

The first part of this issue was not pressed by the respondent's learned counsel, for the obvious reason that there is absolutely no evidence on the record to establish the malafides of the petitioner or the benami character of the petition.

As regards the deposit of the security of Rs. 1,000 the relevant provision of the law is contained in Section 117, according to which the petitioner shall enclose with the petition a Government Treasury receipt showing that it had been made by him in the Government Treasury. Receipt Ex. R1 for Rs. 1,000 shows that money was tendered by the petitioner Tara Singh in the Government Treasury and it also purports to bear his signature. There is further the statement of the petitioner himself that he deposited the money in the bank. We need not discuss the above material, as when the learned counsel for respondent No. 1 rose to reply to the contentions placed before us on behalf of the petitioner, he stated that he will not press this issue. In the circumstances issue No. 4 is also decided in favour of the petitioner.

#### ISSUES ON MERITS

Issue No. 5.—“Whether S. Harbachan Singh had been appointed as Election Agent by respondent No. 10 in accordance with law? O.P.”

Issue No. 5 is one of fact and therefore its determination makes a reference to the evidence led by the parties necessary. It may be pointed out that it was pleaded by respondent No. 1 in paragraph 3 of the written statement that the appointment of Harbachan Singh was not in accordance with law and in paragraph 6 that the appointment should have been made before the delivery of the nomination paper. The first and foremost question is at what exact juncture of time did the Form 5-A (Ex. PW3/1) come into existence. P.W. 3 Mihain Singh, respondent No. 10, stated that Form 5-A (Ex. P.W. 3/1) was filled up by P.W. 10 Joginder Singh Mann on 8th February, 1954, half an hour after the nomination paper (Ex. P.W. 1/1) was filled up by him, and was signed by respondent 10 and also by P.W. 8 Harbachan Singh in his presence. He further stated that Ex. P.W. 3/1 remained with him and was not filed with Ex. P.W. 1/1 as no one had asked him to do so. In cross-examination he admitted that Ex. P.W. 3/1 was with his agent P.W. 8 the day he filed the nomination paper and the latter was present inside the office of the Returning Officer who did not ask him to show or produce it. He stated that he had told the Returning Officer that he had appointed his election agent and offered to produce Ex. P.W. 3/1, but the Returning Officer said that it should have been produced along with the nomination paper and that time for filing it had expired. The statement of P.W. 11, Shri Shanti Sarup, the Returning Officer however, gives a complete lie to P.W. 3. He deposed that before rejecting the nomination paper of respondent No. 10 he asked him why he had not filed Ex. P.W. 3/1 with the nomination paper but was informed by respondent No. 10 that he had not appointed any election agent at all. He stated, this fact was not mentioned in the order rejecting the nomination paper, as the reason given for rejection thereof in the order was sufficient. When the question was pressed further he stated that the Counsel for respondent 10 Shri Kidar Nath had stated after hearing Mihain Singh that nomination paper had to be rejected. Respondent No. 10 had then said “Thik Hai”. This statement is fully supported by R.Ws. 60, 61 and 63 who were present in the office of the Returning Officer and had heard what passed between him and respondent No. 10. The presence of R.Ws. 61 and 63 admits of no doubt as they were candidates and had to be there. The presence of R.W. 60 was admitted by P.W. 11, Shri Shanti Sarup. It so happens that the ink of the signatures of respondent No. 10 and P.W. 8 is different from the ink in which the blanks in the form above the

signatures have been filled up. Therefore, a question arose whether the two portions of Ex. P.W. 3/1 were written at the same or at different times. On this point the statement of P.W. 8 Harbachan Singh, who contradicts P.W. 10 and supports P.W. 11, is informative. He admitted his signature on Ex. P.W. 3/1, but stated that at the time he appended his signature on it, it was blank, and filled up afterwards. He was in his village where it was taken to him by respondent No. 10 and he signed it with the latter's pen, sometime in the month of May, last year. On a request from the learned counsel for the petitioner, the witness was declared hostile and was cross-examined by him. He stated that P.W. 1/1 had not been filled up in his presence and that he did not know Niranj Singh and Attar Singh, the proposer and seconder of Ex. P.W. 1/1. He answered the question, why did he sign it long after the result of the election had been declared, by stating that respondent No. 10 had informed him that he had been disqualified and that Ex. P.W. 3/1 purported to be a representation for the removal of the disqualification. He does not know English, nor does respondent No. 10 and therefore he did not ask him to read it out to him. He put implicit faith in respondent No. 10, as he is the President of the Pasmada Garib Janta Board, Pepsu, of which the witness is the General Secretary. Now P.W. 8, having been produced by the petitioner must be treated as a witness of truth particularly as nothing was brought out by the petitioner's learned counsel in the cross-examination, from which it may be inferred that the witness was not stating the truth.

P.W. 2 Tara Singh petitioner stated in cross-examination that on his enquiry, respondent No. 10, had told him before going inside the office of the Returning Officer that P.W. 10 Joginder Singh Man had filled up the nomination paper and that Harbachan Singh was his polling agent or representative, he did not know which. This statement does not appear to us to be quite appropriate to the occasion, as there was no particular reason, why he should have asked respondent No. 10 who had filled up the nomination paper. The question of filling up the nomination paper by this person or that surely did not at that time arise and should certainly not have arisen at the time, respondent No. 10 was going inside the office of the Returning Officer. It arose only at the time the evidence was being produced before the Tribunal, as difference in the two inks had to be explained. By making the above statement the petitioner showed his anxiety to provide corroboration to any subsequent statement which might be made by respondent No. 10 or Joginder Singh Man. Curiously the statement of respondent No. 10 is silent on the point. It was open to the learned counsel for the petitioner to ask him whether such a talk had taken place between him and the petitioner, but for reasons best known to himself he did not choose to do so. Similarly we are unable to understand why should the petitioner enquire from respondent No. 10 when he was going inside the office of the Returning Officer, whom he had appointed as his election agent. The only appropriate matter on which the petitioner might have queried respondent 10 was whether Form 5-A (Ex. P.W. 3/1) had been filled up and was in his possession or had been filed with the nomination paper. But no such enquiry was made and the statement of respondent No. 10 is silent on the point. The only other statement which is relevant on the point is that of P.W. 10 S. Joginder Singh Man. He stated that Exs. P.W. 1/1 and P.W. 3/1 were both filled up by him at the house of Kanwar Bhupindra Singh, which is situate near the Courts at Bassi, after lunch sometime in the afternoon. He filled them up with his own fountain pen, but P.W. 8 Harbachan Singh did not sign with it as there were several other fountain pens available there. Respondent No. 10 also signed in his presence. He could not state whether he had signed the nomination paper and Ex. P.W. 3/1 with the same pen. There was an interval of 5 or 10 minutes between the signing of the two documents. He admitted that the signatures of respondent No. 10 on both the documents are in different ink. It may be pointed out that the signatures of respondent No. 10 and Harbachan Singh on Ex. P.W. 3/1 are in the same ink and seem to be with the same pen. Beyond the statement of P.W. 10, there is however nothing on the record to prove that several other fountain pens were available at the house of Kanwar Bhupindra Singh. The conclusion is easy if we rely upon the statement of R.W. 10, but it is urged by the learned counsel for the respondents that for various reasons mentioned by him, the witness could not be expected to make his statement with complete independence and detachment. To say the least, we are not impressed by the statement made by him. He stated that he was not a member of the Akali Party but admitted in cross-examination that he had been returned to the Council of States on the ticket of the United Front Party which is a combination of several parties including the Akali Party and during the election of 1954, the witness admitted that he had an **alliance with the Akali Party**. In the election of 1951-52 he had fought the election on the symbol of the Akali Party which was taken by him, as it had been

offered to him. At that time the United Front Party had not come into existence and was formed later. We do not wonder therefore that he filled up the nomination papers of all the Akali candidates, etc. respondents 1 and 10 as admitted by himself and respondents 4 and 8 as stated by R.W. 61, respondent No. 8 Further his statement that he filled up all these papers on 8th January, 1954, is shown to be incorrect when faced with the nomination papers of respondents 2 and 6 as they are both dated 9th January 1954. Lastly apart from his alignment with Akali Party, as is also clear from the statement of P.W. 2, the petitioner, that he helped the official candidate of the party, Respondent No. 2, there seems to be no love lost between him and respondent No. 1 who had defeated him in the election of 1951-52. We will accordingly say no more about the statement made by him, and consider the evidence of other witnesses on the point.

Now so far as the statement of P.W. 8 Harbachan Singh and P.W. 11 Shri Shanti Sarup and R.Ws. 60, 61 and 63 are concerned, they tally with each other at least to this extent that on the day Ex. P.W. 1/1 was filed, Ex. P.W. 3/1 was not in existence. On the face of it, the statement of P.W. 8 is against the express wording of Ex. P.W. 3/1. so far at any rate as the date is concerned. It is dated 8th January, 1954. P.W. 3 Respondent 10 has mentioned the date as 8th February, 1954. P.W. 8 has explained by stating that it was about this time last year and was harvesting time. The 8th of February, 1954 is an obvious slip, but we are of the view that even if the exact period of time when Ex. P.W. 2/1 came into existence is not known it is clear that it had not seen the light of the day when the question cropped up in the office of the Returning Officer. The latter deposed clearly and positively that Respondent No. 10 had told him that he had not appointed Harbachan Singh as his agent. The question could not arise, though was asked, why this fact was not mentioned in his order rejecting the nomination paper, as the obvious basis of the order was that it had not been filed. It may also be that he was not aware of the legal position that non-existence of the Form 5-A at or before the delivery of the nomination paper made the latter invalid and was itself a good ground for rejecting it. P.W. 11 has no alignment with any party and therefore made his statement with that degree of detachment which must exist before it can pass. Besides he is corroborated by R.Ws. 60, 61 and 63. The statement of P.W. 3, Respondent 10, appears to us to consist of a made up version and was made obviously to give support to the petitioner. In the first instance he had given two irreconcilable versions on the question relating to the possession of Form 5-A secondly if it is true that Ex. P.W. 3/1 was with Harbachan Singh who was present inside the office of the Returning officer, would he not have protested that his appointment as an election agent had been made and the form of his appointment was with him. He would have had it produced or in any case the petitioner would have put Shri Kidar Nath, Advocate, who according to P.W. 11 was there in the witness-box. It is strange that Ex. P.W. 3/1 did not see the light of the day till 23rd February, 1955, long after the filing of the Election petition. Would this also not lend support to the impression that it came into existence for the purpose of the Election Petition and as deposed to by P.W. 8.

Be that as it may, on a close scrutiny of the oral evidence we are clearly of the view that Ex. P.W. 3/1 had not been executed or filled up or signed at or before the delivery of the nomination paper. Therefore, we find issue No. 5 in favour of respondent No. 1 and against the petitioner.

*Issue No. 6.*—"Whether the order of the Returning Officer that respondent No. 10 had not appended a declaration regarding the appointment of the election agent in Form 5-A to the nomination paper was improper and had materially affected the result of the election? O.P."

In view of our judgment in Election Petition "Gurdial Singh Vs. Manmohan Kaur" published in Gazette of India Extraordinary, Part II Section 3, No. 155 dated 9th May, 1955, this issue does not call for any further comment or discussion and for reasons mentioned there we hold that the Returning Officer was not justified in rejecting the nomination paper of Respondent No. 10 on the simple ground that Form 5-A had not been attached with it. And if this were all, there would be no alternative but to hold that the order of the Returning Officer was improper. But we have found in connection with issue No. 5 that Harbachan Singh had not been appointed election agent by respondent No. 10 and that Form 5-A had not come into existence before the nomination paper was delivered to the Returning Officer. As held in the Judgment referred to above, the Returning Officer should have also held accordingly and we must hold now that the declaration of the appointment of the election agent as contained in the nomination paper was untrue

or false and that accordingly the nomination paper was invalid. We are therefore of the view that the nomination paper should have been rejected by the Returning-Officer on this ground. The result is that the order passed by him was proper and must be upheld though for different reasons and on a different ground. Accordingly the question of the result of the election having been materially affected does not arise. This issue is therefore decided against the petitioner.

*Issues No. 7, 8 and 9.*—“(7) Whether respondent No. 1 and his agents with his connivance obtained, procured, abetted and attempted to obtain assistance for the furtherance of prospects of his election from State Government servants in the form of appointment of polling agents and agents to work and canvass support and arrange shamiana and durries and congress flags as alleged in para. 12(2) of the petition, annexure ‘A’ and further and better particulars dated 23rd December 1954? O.P.

(8) Whether the persons mentioned in para. 2 of annexure ‘A’ are not State Government servants? O.R.

(9) Whether Balwant Singh son of Sohan Singh was appointed as respondent’s polling agent and acted as such? O.P.”

These are allied issues and may be taken up together. They arise out of the petitioner’s allegation contained in paragraph 12(2) of the petition, Annexure A and further and better particulars that respondent No. 1 and his agents had with his connivance obtained etc. etc. assistance for the furtherance of the prospects of his election from State Government Servants by appointing some of them as his election agents and asking others to work and canvass support for him or arrange Durries, Shamianas and Congress flags for him. Two further questions which have been raised in connection with the above allegations and call for determination are:

(a) Whether Balwant Singh, Lamberdar of Balhari had been appointed by respondent No. 1 as his polling agent and had acted as such.

(b) Whether the persons mentioned in para. 2 of annexure A and described as Naya panches and panch Pradhan were not Government Servants.

The petitioner as P.W. 2 mentioned only generally that respondent No. 1 had obtained assistance during his election from Balwant Singh Lamberdar or in his capacity as polling agent and that Shamsher Singh Zaildar, Jot Ram of Nandpur, Chhattar Singh Sufedposh of Mulepur, and Master Inder Singh all of them had gone with Respondent No. 1 and done propaganda for him amongst the Harijan Voters. He also stated that at Nandpur Kesho Hari Sharn arranged for durries and Shamianas for the camp of respondent No. 1 on 28th February, 1954 and also did propaganda for him for securing votes at Nandpur Kehso, Bagrian and Hallo Tali. He was a Naya Panch with Judicial Powers and had been elected by the people and the Government had the power to remove him. Nand Lal another Adalti Panch had also approached the voters, namely Norata Lamberdar Rabbi of Akar, Lamberdar Bakhtawar Singh and Gurdit Singh of Tehalpura. Ripudaman Singh of Rorewala, another Adalti Panch has arranged for durries at Chalela polling station and had asked Raghbir Singh, Daya Singh and others to vote for respondent No. 1. Petitioner admitted in cross-examination that the names of the persons approached by Hari Sharan at Nandpur Kehso, Bagrian and Hallo Tali, as mentioned at pages 1 and 2 of the further and better particulars were given to him by the polling agent Tyagi and that he did not know any one of them. The names of the voters approached by Ripudaman Singh were given to the petitioner by Raghbir Singh of Chalela while those approached by Nand Lal at Akar were given to him by Bhagwan Singh Lamberdar of Panjoli. It is not the petitioner’s case that he had himself seen the persons named above approaching the voters and doing other jobs attributed to them. It is indeed strange that none of the persons who conveyed the information to him namely Raghbir Singh, Bhagwan Singh or Tyagi was produced by him. Having completely failed to prove the source of his information, he might have produced some witnesses who may have seen Hari Sharan, Ripudaman Singh and Nand Lal doing some of the acts attributed to them in different villages but he did not lead even this kind of evidence. On pages 1 and 2 of the further and better particulars a long list consisting of 32 persons who are alleged to have been approached is set out, but none of them has been produced. The petitioner had summoned 18 witnesses and stated on 25th February, 1955, that he will bring with himself about 30 witnesses more, but he closed his evidence after producing 25 witnesses in all including both summoned and un-summoned witnesses. The impression created on our mind is



irresistible that the petitioner had made up a case or made out a story which was not true and correct and therefore could not substantiate it. On the general question whether assistance had been obtained by respondent No. 1 from State-government servants by appointing some of them as election agents and asking others to canvass support or arrange for durries, Shamianas or Congress flags, the petitioner has produced P.Ws. 5 to 7, 14, 15 and 18, but we have no hesitation in rejecting their statements as false for reasons mentioned later.

Before dealing with the allegations of corrupt practice, we may point out that they are in the nature of criminal charges and if proved, entail penalties for all persons including the winning candidate and those associated with him and are sometimes recklessly made, which, to say the least is highly improper, and not permissible under the law. The Representation of People Act 1951 has provided safeguards and the law sets out with strictness the contents of the petition and the manner in which it is to be drafted. It is a wholly faulty or defective method of drawing up a petition if the various provisions of Section 123 of the Act are copied verbatim or almost verbatim as has been done in this case. According to Section 83 of the Act an election petition shall be so drafted, as to contain a concise statement of the material facts on which the petitioner relies. It is an imperative provision of the law and must be complied with, as that will prevent the petitioner from inventing facts at a later stage. The law is very jealous that the requirement should be fulfilled, as it further makes it imperative that the petition containing the facts shall be accompanied by a list setting forth full particulars of any corrupt or illegal practice alleged by the petitioner. It is obviously so, as the allegations being, in the nature of criminal charges, the respondent must have notice of definite facts, so that it may be possible for him to prove them to be false. According to Section 90(4) of the Act, the law has gone to the extent of arming the Tribunal with the power to dismiss the petition if the provisions of Section 83 are not complied with. We feel equally strong as regards the nature of the evidence required to be produced in order to prove the facts set out in the petition, and are of the view that it must be such as would sustain a conviction in a criminal case. Accordingly the standard of proof required must be the same as in a criminal case, and the evidence must be so satisfactory as to leave no room for any reasonable doubt (Sarin and Pandit's Indian Election Law pages 397 and 472).

We have scrutinised the evidence produced by the petitioner in the light of the above observations and have no hesitation in holding that it falls far short of the high standard of proof set up by a long chain of authorities on the point. In connection with many allegations there is nothing but the statement of the petitioner and his learned counsel has relied strongly upon it. This however is not sufficient, as the petitioner is an interested party and independent corroboration of the allegations made by him must be forthcoming if he is to be believed. (Sarin and Pandit Indian Election Law page 473). In paragraph 1 of annexure A it was alleged that Balwant Singh Lamberdar of Balhari had been appointed as a polling agent for village Manupur polling station and had acted as such on 28th February 1954. In the original further and better particulars there are allegations regarding Balwant Singh of Balhari asking the voters to vote for respondent No. 1 on 27th February 1954, 28th February 1954. By an order passed on 15th December 1954 these allegations were ordered to be deleted. The petitioner having however come to know that the Supreme Court had held in 1954 Supreme Court 587 that if a Government Servant was appointed to act as a polling agent and acted as such, this *per se* was not a corrupt practice, he introduced Balwant Singh of Balhari over again in Annexure E as having contacted voters on a different date i.e. 26-2-1954 and village Balhari was added. Our order, dated 15th December 1954 was no doubt carried out, but it was circumvented in the above manner. This would not have been allowed and the above fresh particular would have been deleted if our attention had been drawn to it. Be that as it may, the only question now is whether it has been proved that Balwant Singh Lamberdar had been appointed and had acted as a polling agent at Manupur. We are not unmindful of the legal position that even if it had been proved that he had, it would not amount to corrupt practice. Balwant Singh who was produced by respondent 1 as R.W. 34, completely denied his appointment or having acted as a polling agent. He is an old man of 72 years and was shaking in the witness-box on account of old age. We felt at the time we saw him that all the activity attributed to him by the petitioner and his witnesses e.g. P.Ws. 13, 19 and 20 was a subterfuge and were not surprised when the learned counsel for the petitioner stated that he did not wish to cross-examine him. As a matter of fact the petitioner confused him with R.W. 33. Balwant Singh of Balhara who had acted as polling agent of Respondent No. 1 at Manupur but he is not a Lamberdar. The learned counsel urged that it was still open to him to show that Balwant Singh of Balhari had at least

attempted to act as a polling agent of Respondent 1. He relied upon the statements of P.Ws. 13, 19 and 20 but we do not propose to comment on these statements, as besides the fact that they prove nothing, the petitioner must be confined to the allegations in the further and better particulars and not allowed to travel beyond them, and prove the attempt which was not alleged at all.

In paragraph 2 of Annexure A some activities are attributed to Hari Sharan of Chalela, Ripudaman Singh of Rorewala and Nand Lal of Akar. We have already dealt with them above and are not swayed by the contention of the learned counsel that although there is nothing on the record to prove these activities beyond the statement of the petitioner, it should be held to be sufficient to establish them. The petitioner's statement, highly interested as it is, goes for nothing unless it is corroborated by independent testimony of a reliable character.

In paragraph 3 of Annexure A it was alleged that Respondent 1 and Mukand Singh had approached Jot Ram, Master Inder Singh, Chhattar Singh and Shamsher Singh and asked them to work for respondent No. 1 and give all round assistance. Dates on which these persons were approached are given as from 1st January 1954 to 28th February 1954 which is a very long range indeed and can be due only to the anxiety of the petitioner to widen the scope of his search for witnesses as much as possible. In the particulars dates mentioned are 18th January 1954, 21st January 1954 and 14th February 1954. The petitioner has nothing to say regarding the above allegation while P.W. 5 Waryam Singh, the only witness relied upon as regards approaching Chhattar Singh says nothing material. Four persons were mentioned in the particulars as being witnesses to this fact and 100 persons were stated in the lists attached to these particulars as having been contacted by Chhattar Singh in 12 different villages, but only P.W. 5 was produced. After stating that he and Mukand Singh had asked him to get votes, he admitted in cross-examination that he could not recognise Mukand Singh and knew him by name only. How then could he say, he had come with Chhattar Singh. The latter appeared as R.W. 24 and denied having worked for respondent 1. Similarly R.W. 21, Amar Singh controverted the allegation by stating that Mukand Singh and Chhattar Singh had never come to Nalini. To the same effect is also the statement of R.W. 26, Mukand Singh.

As regards the allegation that Master Inder Singh had been approached by respondent No. 1 and Mukand Singh reliance is placed by the learned counsel for the petitioner on the statements of 4 witnesses, namely P.W. 6, Joginder Singh, P.W. 14, Tehal Singh, P.W. 15, Naurang Singh and P.W. 18, Dalip Singh. Now so far as the last witness is concerned we need not say anything about his statement as he belongs to Bhamarsi which is not one of the villages mentioned in the further and better particulars as having been visited by Inder Singh. P.W. 6, Joginder Singh's statement is not of any help either for various reasons. It does not mention the date when he saw Inder Singh visiting his village Sanipur but he has given us some idea inasmuch as he deposed that he had come to the village 10 days after Fatehgarh Sahib Jor Mel. The fair took place on 27th of December, 1953 and therefore the date of the visit would be approximately about the 6th or 7th of January, 1954. In this constituency as is clear from what has been stated elsewhere nomination papers were filed by the various candidates on the 9th of January, 1954 on which date election may be said to have started. Accordingly it is urged that if what the witness stated is correct, it could not be considered to be a corrupt practice in so far as election in this constituency is concerned. We are however not impressed by this contention. The name of this witness was mentioned in the further and better particulars and yet petitioner did not summon him and chose to bring him with himself. He stated that the petitioner had gone to his house the night before and had only asked him to come to the Tribunal and give evidence and said nothing else. He had not met him before and it is not clear from the material on the record how the petitioner had come to know that P.W. 6 had some material facts within his knowledge and accordingly his statement would be useful to him. The statements of R.W. 12 Sadhu and R.W. 13 Parbhu produced in rebuttal by respondent No. 1 show that P.W. 6 is not a reliable witness at all. He stated that during the visit of respondent No. 1 and Mukand Singh there was a meeting in the Dharmshala in the village when these two witnesses were present. Both these witnesses have stated that no meeting was ever held in the Dharmshala and respondent No. 1 had never visited Sanipur. P.W. 14 Tehal Singh appears to be a tutored witness as he delivered the whole story in answer to a single question. We had this impression at the time he was making the statement and that is why the question and the lengthy answer given by him were both recorded. The statement shows besides this fact that he was under the influence of Naurang

Singh Lamberdar who had come with him to the Tribunal in order to appear as a witness. P.W. 15 Naurang Singh is also not a reliable witness for as stated by P.W. 3, Mehain Singh he had worked for the Akali Party during the last election and is not a disinterested witness. Respondent No. 1 would, in the circumstances, be the last person to approach him for support. He was anxious to show that he had no alignment with any political party or that he was an independent witness therefore stated that he had worked for respondent 1 during the last election and would do so again if another opportunity is afforded to serve him. He also stated that he had not met P.W. 14 Tehal Singh before but the latter has contradicted him on this point. His statement that he had no talk with the petitioner about what he had deposed is hardly believable as otherwise how did the petitioner know that it would be worthwhile to produce him as a witness. In rebuttal respondents have produced three witnesses namely R.W. 23 Inder Singh himself, R.W. 5 Ved Parkash a clerk in the Government High School at Nandpur Kesho and R.W. 22 Ram Partap, Head Master. R.W. 23 categorically denied having given any assistance during the last election to respondent No. 1 or having contacted P.Ws. 13 and 14. As regards P.W. 15 he has stated that he is not known to him at all. R.Ws. 5 and 22 stated that Master Inder Singh had taken leave for 2 or 4 days only in the months of January and February, 1954. R.W. 5 stated in addition that Master Inder Singh may have gone to the neighbouring villages on Sundays. In the annexures the dates on which Master Inder Singh is alleged to have carried on his activities were originally mentioned as somewhere between 1st of January and 28th February, 1954. In the further and better particulars the dates mentioned were 7th, 12th and 26th of January, 1954 and 6th of February, 1954. None of these dates falls on a Sunday, as is clear from a perusal of the calendar for 1954. R.W. 5 stated that Master Inder Singh had taken leave on 29th of January 1954 and 3rd and 4th and 16th of February, 1954. The suggestion for having these dates specified probably was that Master Inder Singh had at least gone out on these dates, if not on others, in order to carry on his propaganda in favour of respondent 1 but it is clear that these dates are totally different from those which are mentioned in the further and better particulars referred to above. The respondent has produced in addition to R.Ws. 12 and 13, R.W. 14 Kesar Singh R.W. 36 Amar Singh and R.W. 65 Kartara in rebuttal. All of these witnesses have stated that Master Inder Singh did not visit their village during the elections. Kartara went to the length of stating that he did not know him at all.

Shamsher Singh and Bakhtwar Singh lamberdars are two other persons alleged to have been contacted by respondent No. 1 and Mukand Singh but it was frankly conceded by the learned counsel for the petitioner that there was absolutely no evidence in support of this fact. Before passing on to the details in connection with other persons, it may be pointed out that according to the further and better particulars Master Inder Singh had visited in the Company of Respondent 1 and Mukand Singh 6 villages and contacted 16 persons. The petitioner was, however, able to produce only 3 witnesses, and these also about allegations in 3 villages only. What has been stated above would show that not only the witnesses produced are not reliable but that the fabric which the petitioner had constructed in the annexure and the further and better particulars completely collapsed.

In paragraph 4 of annexure 'A' respondent No. 1 and Mukand Singh are alleged to have approached Jot Ram, Partap Singh Lamberdars and Harchand Singh Patwari. So far as Jot Ram is concerned, 5 persons and 7 villages are mentioned as having been visited by him, but it is indeed strange that none of these persons has been produced. Reliance was placed upon the statement of P.W. 7 Janak Singh and P.W. 18 Dalip Singh from Sanipur and Bhamarsi respectively. Reference to the further and better particulars, however, shows that neither of these two villages is mentioned as having been visited by Jot Ram. The respondent produced 3 witnesses in rebuttal namely R.W. 25 Jot Ram, R.W. 26, Mukand Singh and R.W. 37 Naurang Singh of Pajola. The first two witnesses denied having supported respondent No. 1 or for that matter any other candidate during the last election. R.W. 37 need not have been produced as Panjola is not one of villages alleged to have been visited by Jot Ram. So far as Partap Singh lamberdar is concerned it was alleged in the further and better particulars that respondent No. 1 and Mukand Singh had approached him at Sanipur on 7th and 25th of January, 1954 and 6th of February, 1954. Support for this fact is sought from the statement of P.W. 6 Joginder Singh of Sanipur already mentioned in connection with Master Inder Singh. He stated that respondent No. 1 had come on three occasions with Mukand Singh, 10 days after the Fatehgarh Sahib Jor Mel, and that while matter regarding votes was being discussed Ram Partap was sent to fetch Partap Singh. When Partap Singh arrived Respondent 1 asked him in his presence to secure votes for him. Although

it is stated that respondent No. 1 had approached Partap Singh in his village on 3 different dates P.W. 6 describes only one visit. Partap Singh has appeared as R.W. 16 and stated that he had not been approached by respondent No. 1 or Mukand Singh during the last election. It appears from the statement of P.W. 3 that R.W. 16 Partap Singh had helped the Akali Party during the last elections. On a complaint made against him on this ground he had been suspended and that complaint was still pending. In the circumstances, it cannot be believed that he would be contacted by respondent No. 1, a congress candidate.

As regards Harchand Singh Patwari having canvassed support for Respondent No. 1 P.W. 13 Inderjit is the only witness, but we are not prepared to rely upon his statement for various reasons. P.W. 3 Mihain Singh mentioned him also as having worked for the Akali Party during the last election. Accordingly it cannot be held for a moment that Harchand Singh would have worked for respondent No. 1. Further P.W. 13 imported into his statement another fact and that is that when respondent No. 1 did not fulfil his promises to the Harijans as regards grants of lands he complained to R.W. 31 Professor Jagan Nath and R.W. 32 Kishan Singh Dangeri. Both these persons have been produced in rebuttal and completely denied having visited the shop of P.W. 13 or having received any complaint from him. On the contrary they stated that P.W. 13 was a worker for Janak Singh, an Akali candidate.

This is all the evidence which has been produced in support of the allegations regarding assistance having been taken from Government servants, but since it falls far short of the standard of proof required to prove such a serious allegation, we have no hesitation in holding that the petitioner has completely failed to discharge the burden of issue No. 7.

**Issue No. 8.**—Respondents' learned counsel frankly conceded that Panches, Lambardars, Sufedposhes and other persons mentioned in Annexure A may all be held to be Government servants under proviso (8) to Section 123 of the Act. Accordingly this issue is decided against the respondents.

**Issue No. 9.**—This relates to Balwant Singh Lamberdar of Balhari and we have already dealt with it at length, and no separate comment is now called for. This issue is decided against the petitioner.

**Issues Nos. 10 and 11.**—"10(a) Whether respondent No. 1 and his agents with his connivance made promises, as alleged in paras 12(3) and (7) of the petition, annexures B and E and further and better particulars dated 23rd December 1954, of grants of land to voters belonging to scheduled castes named in the further and better particulars with the object of inducing them to vote for respondent No. 1 and refrain from voting for respondents 2 to 5.

(b) Did the practice of promise of grants of land as alleged in this issue prevail extensively in the constituency? O.P.

(ii) If issue No. 10 is found in favour of the petitioner, does promise of grant of land to scheduled caste voters referred to in the preceding issue, not amount to corrupt practice and was only in accord with the State Policy under the Constitution of India? O.R."

These issues relate to allegations regarding promises of grants of lands to Harijans named in the further and better particulars in order to induce them to vote for respondent No. 1 and refrain from voting for respondents 2 to 5. The case set up by respondent No. 1 is that even if this is proved, it did not amount to corrupt practice and was only in accord with the State Policy under the Constitution of India.

As has been pointed out above particulars relating to the alleged promises of grants of lands are contained in annexure 'B' and the further and better particulars at pages 10 to 13. In annexure B it was stated that on various dates from 1st of January, 1954 to 25th of February, 1954 respondent No. 1 and his agents Sham Singh, Ram Partap and others mentioned in annexure 'A' approached the Harijans and promised grants of lands to them at Nandpur Kesho, Chanarthal, Nalini, Panjola, Panjoli and other villages throughout the constituency.

Annexure 'E' is more generally and vaguely worded than annexure 'B'. In the further and better particulars the following details are set out:

"(a) They visited Nandpur Kesho on 17th of January and 9th of February, 1954 and approached 7 Harijans named in the particulars;

- (b) They went to Chanarthal on 10th of January, 1954 and 15th of February, 1954; while respondent No. 1 went there on 28th of January, 1954 and 3rd and 22nd of February, 1954. It is alleged that Ram Partap and Mukand Singh took Shamsher Singh Zaildar to 9 electors named in the particulars.
- (c) Respondent No. 1, Mukand Singh, Ram Partap and Chhatar Singh are alleged to have visited 4 villages and contacted 27 electors all mentioned in detail in the particulars on the 18th, 21st of January and 14th and 23rd of February, 1954.
- (d) Hari Sharan is alleged to have visited 3 villages and contacted 8 electors named in the particulars on 27th of February, and even on the 28th of February, 1954 which was the polling day.
- (e) Mukand Singh and Master Inder Singh are alleged to have offered grants of lands to two electors mentioned in the particulars on 7th of January, 12th and 26th of January, 1954 and 6th of February, 1954.
- (f) Chhatar Singh, Lamberdar is alleged to have offered grants of lands in two villages to 9 electors mentioned in the particulars on 18th, 21st of January, and 14th and 23rd of February, 1954."

An Annexure 'E', it may be pointed out, is a verbatim copy of annexure 'B' except as regards villages Manupur and Balhara and Balwant Singh of Balhara is alleged to have contacted 5 Harijans in Manupur and one in Balhari.

A careful scrutiny of the annexure and further and better particulars shows that according to the allegations 72 voters were contacted in 13 villages on 17 different dates. The petitioner himself did not specify any of the above details in his statement and contented himself by merely stating that whatever was stated in the petition was correct. This method of making a statement on oath does not appear to us to be sound even technically. Besides it leaves an impression on the mind of the court that the petitioner is not familiar with the details and does not wish to take the risk of going into them. It may be pointed out that in spite of a stupendous list of places and electors visited, the petitioner has produced only 3 witnesses namely P.Ws. 6, 13 and 21. We have already discussed the statement of P. W.6 Joginder Singh of Sanipur and now do not feel the necessity of adding to our comment. Suffice it to say that village Sanipur to which this witness belongs is not mentioned in the list of villages and his name does not appear in any of the lists given in the particulars. P.W.13 Inderjit Singh says nothing regarding the offer of grants of lands in the examination-in-chief and for reasons mentioned already what he states in cross-examination is not believable as he had his alignment with the Akali Party and is accordingly a partisan witness. P.W.21 Desa Singh belongs to Isher Heri, but deposes to what he saw at Lataur. We are not prepared to believe him either, as he was brought by the petitioner with himself and yet the witness stated, the latter did not tell him what statement he will be called upon to make. Considering the course of human conduct this cannot be believed and only shows the anxiety of the witness not to let the petitioner down. He even concealed the fact deposed to by P.W.20 that he and P.Ws. 16 to 19 were together at a Tea Stall in Patiala on the day he came to the Tribunal to make the statement. His partiality towards the petitioner is patent on the face of it.

P.W.2 stated that Bakhtawar Singh had informed him that Nand Lal and Norata Lamberdar were holding out promises of grants of lands to Harijan Voters but this statement remains wholly unsubstantiated as Nand Lal and Norata are not mentioned in the annexures and further and better particulars; while Bakhtawar Singh had not been produced. The above meagre evidence which in our view falls far short of the proof required in order to establish the allegations of bribery has been rebutted by respondent No. 1 by the statements of R.Ws. 6, 7, 8, 9, 12, 13, 16 and 52. R.W.9 Jetha is mentioned in the further and better particulars but was not produced by the petitioner and has stated as a witness for respondent No. 1 that no promise of grants of lands was made, though his village was visited by respondent No. 1. R.W.6 Jaspal Singh of Balhara made a similar statement and so also the other witnesses whom it is not necessary to discuss.

The above analysis of the case seems to us to be ample for the purpose of holding that finding cannot be given on the shoddy evidence produced by the petitioner. On the contrary the respondent has shown beyond all manner of doubt that the allegation is altogether false.

Issue No. 11.—In view of our finding on issue No. 10, issue No. 11 does not arise. It has been submitted by the learned counsel for the respondents that even if the evidence produced by the petitioner is said to have established the offer of grants

of lands, it does not amount to bribery within the meaning of Section 123(2) proviso. In view of our finding on issue No. 10, we do not feel called upon to go into this question.

*Issue No. 12, (a) and (b).—*"12(a) Whether the change of the symbol from 'Railway Engine' allotted to respondent No. 2 to 'ladder' had materially affected the result of the election? O.P.

12(b). Whether the symbol of 'ladder' was accepted by respondent No. 2 willingly and if so how did it affect the result of the election? O.P.

It is an established fact on the record that the symbol of 'Railway Engine' originally allotted to respondent No. 2 was changed by the Returning Officer to 'ladder' about 20 days before the polling day. 'Railway Engine' was mentioned by Respondent No. 2 as one of the symbols in his nomination paper and the Returning Officer carelessly without making sure whether it was one of the symbols in the approved list made the allotment. It was only after his attention was drawn to the mistake committed by him by the Election Commission, that the change was effected.

The question raised is whether the change had materially affected the result of the election. But we are wholly unable to understand the position taken by the petitioner's learned counsel. If it is intended to bring the case within the mischief of Section 100(2)C, there must be non-compliance of the rules. But this is a case of compliance with the rules, as otherwise the change would not have been made. Besides respondent No. 2 cannot complain, as he had himself asked for 'Railway Engine' which was an unapproved symbol. The change had to be made and the question of the result of the election having been materially affected does not arise. The statements of P.Ws. 3, 6 and 7 relied upon by the petitioner's learned counsel need not therefore be discussed. Issue 12(a) is decided against the petitioner.

*Issue No. 12(b).—*This issue has arisen out of the plea that Respondent No. 2 willingly accepted the symbol of 'ladder'. No question of willingness arises, as the symbol of 'Railway Engine' was unapproved and had to be changed. P.W. 11 stated that Respondent No. 2 did not want the change. Be that as it may, the respondent has failed to prove the consent of respondent No. 2 to the change. The issue is decided against respondent No. 2.

*Issue No. 13, (a), (b) and (c).—*"13(a) Whether respondent No. 1 and his agents with his connivance incurred un-authorised expenditure in hiring motor vehicles and obtaining petrol for the conduct and management of the election in schedule V of the Act? O.P.

(b) Whether the Return of Election expenses and declaration filed by respondent No. 1 was false in material particulars as alleged in para. 12(5) of the petition, annexure 'C' and further and better particulars dated 23rd December, 1954? O.P.

(c) Whether respondent No. 1 and his agents with his connivance hired and procured on payment and otherwise motor vehicles and country-carts for conveyance of electors to and from the polling stations as alleged in paragraph 12(6) of the petition, annexure 'D' and further and better particulars dated 23rd December, 1954? O.P.

Issues 13(a) and 13(b) have not been pressed.

*Issue No. 13(c).—*The allegations in connection with this issue as contained in annexure 'D' and further and better particulars are confined to only 3 polling stations namely Chalela, Reona Niwan and Jalla. As regards Chalela it is alleged that Ajmer Singh, Faqir Singh, Babu Ram and Ripudaman Singh had hired and procured on payment country carts on 28th of February, 1954 for the conveyance of electors to and from the polling station. In connection with Reona Niwan the names of Munshi Ram and Gurnam Dass are mentioned; while Maghi Ram, Mukand Singh and Parma Nand are alleged to have hired motor vehicles for conveying electors from Sidhwan to Jalla. Fuller details are furnished in the further and better particulars; and so far as Chalela is concerned it is alleged that 4 persons named there had engaged country carts and the names of voters who were conveyed from various villages to Chalela are also mentioned for the first time. These are five voters from Manupur, 6 from Naulakha, 26 from Rurki. The numbers of the tractors used for conveying the voters to Reona Niwan are also mentioned and the names of 51 electors who were conveyed along with their wives are also given. At Jalla it was alleged that 34 voters and their wives were conveyed in a bus from Sidhwan. For the purpose of establishing such voluminous details, the petitioner has produced only 3 witnesses namely P.W. 7, 21, and 22. In his own statement he gave

details regarding Reona Niwan and Jalla only and said nothing whatsoever about Chalela. He himself was not present at Reona Niwan or Jalla and mentioned the name of Hari Singh of Lataur and Bhagwat Singh as having brought the voters in country carts to Reona Niwan and of Gurbachan Singh as having conveyed voters to Jalla, but none of these persons have been produced. Considerable stress has been laid on the statement of P.W.7 Janak Singh respondent No. 2. According to him Hari Singh of Lataur had taken 20 to 30 persons from Lataur to Reona, but he was able to remember the name of one Amar Nath only and he admitted that he did not tell this fact to any one, not even to the petitioner. As a respondent he is no doubt interested against respondent No. 1. If he had actually seen voters being carried to the polling station, since he was himself a candidate it should have been possible for him to furnish fuller details. As it is, his statement is very meagre. R.W.38 Amar Nath, who is alleged to have been seen by him as one of the persons carried has denied having gone in a motor vehicle and has stated on the contrary that he and all the other voters had gone to the polling station from their village on foot. P.W.21 Desa Singh's statement does not carry the case any further. All he stated was that Respondent No. 1 and Mukand Singh were heard by him saying to the villagers at Lataur that they will be conveyed next day in two lorries. This witness was not in a position to state that any lorries were actually hired for the purpose of conveying the voters. The learned counsel for the petitioner has conceded that the statement of this witness by itself is not sufficient to prove the allegation made by the petitioner and that it should be considered along with the rest of the evidence. We have already referred to the statement of P.W. 7 and consider that it is not worthy of credence. The only other evidence on the point consists of the statement of P.W. 22 Lal Singh of Rorewala. He had according to him gone to Chalela to cast his vote in a country cart and carried 4 or 5 other voters at the instance of Hari Sharan who had paid Rs. 5/- as hire. We are not prepared to believe the statement of this witness as it does not stand to reason that he would go in a country cart in order to cast his vote when the polling station was at a distance of about one mile only. Besides the electors alleged to have been carried by him have been produced by respondent No. 1 as R.Ws. 54, 55, and 57 who have all stated that they had gone on foot and saw no country carts either on the way or at the polling station. R.W.54 stated that she was late in going and came back after covering half of the distance as she was told by her husband who was returning that the voting was over. R.W.55 supports this statement as she deposed that R.W.54 had actually returned after covering half the way. If it were a fact that a sum of Rs. 5/- had been paid to Lal Singh on account of hire, it should have been put to the witness, but this was not done. P.W. 3 Mihain Singh Respondent No. 10 has given a complete lie to the petitioner's allegation on this point. He stated that he had gone to the three polling stations namely Chalela, Jalla and Reona Niwan, but did not notice any country cart, motor vehicle or bus carrying any voters on behalf of the congress. Although the evidence produced by the petitioner is very meagre the respondent has rebutted this meagre evidence by the statements of R.Ws. 6, 7, 9, 10, 11, 15, 17, 18, 26 to 29, 31, 33, 38, 39, 40 to 42, 46, 48 to 50, 51, 53, 66 to 68 who have all stated that the polling station was very near to their villages and that all the voters had gone on foot.

In the circumstances we have no hesitation in holding that the petitioner has miserably failed to show that the respondent and his agents had hired motor vehicles and country carts for the conveyance of electors to and from the polling station. Issue No. 13(c) is accordingly decided against him.

The result is that the petition fails and is hereby dismissed with costs which are hereby assessed at Rs. 650/-.

(Sd) NAWAL KISHORE, *Chairman.*

(Sd) KRISHNA SAHAI, *Member.*

(Sd) DALIP SINGH, *Member.*

[No. 82/23/54/9620.]

By Order,

DIN DAYAL, Under Secy.

